

No. 16-30080

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

**AMMON BUNDY,
RYAN PAYNE,
RYAN BUNDY,
BRIAN CAVALIER,
and BLAINE COOPER,**

Defendants-Appellants.

**SUPPLEMENTAL
EXCERPT OF RECORD**

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TABLE OF CONTENTS

| | Page |
|--|-------------|
| Excerpt Transcript of Proceedings held April 6, 2016 | 1 |

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)
Plaintiff,) Case No. 3:16-CR-0051-BR
v.) April 6, 2016
AMMON BUNDY (1),)
JON RITZHEIMER (2),)
JOSEPH O'SHAUGHNESSY (3),)
RYAN PAYNE (4),)
RYAN BUNDY (5),)
BRIAN CAVALIER (6),)
SHAWNA COX (7),)
PETER SANTILLI (8),)
JASON PATRICK (9),)
DUANE LEO EHMER (10),)
DYLAN ANDERSON (11),)
SEAN ANDERSON (12),)
DAVID LEE FRY (13),)
JEFF WAYNE BANTA (14),)
SANDRA LYNN ANDERSON (15),)
KENNETH MEDENBACH (16),)
BLAINE COOPER (17),)
WESLEY KJAR (18),)
COREY LEQUIEU (19),)
NEIL WAMPLER (20),)
JASON CHARLES BLOMGREN (21),)
DARRYL WILLIAM THORN (22),)
GEOFFREY STANEK (23),)
ERIC LEE FLORES (25),)
JAKE RYAN (26),)
Defendants.)
Portland, Oregon)

EXCERPT TRANSCRIPT OF PROCEEDINGS

(Excerpt of Oral Argument)

BEFORE THE HONORABLE ANNA J. BROWN, DISTRICT JUDGE

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(The following excerpted proceedings were held on Wednesday, April 6, 2016; 10:52 a.m.)

THE COURT: All right. Thank you very much.

All right. Let's move to the motion that is docket No. 357, for a stay of the order I entered, authorizing the marshal to honor the habeas corpus writs ad prosequendum for some certain of the defendants.

I wanted first to ask whether -- and I understand, Mr. Federico, you're basically the lead on behalf of defendants for this issue.

MR. FEDERICO: Yes, your Honor.

THE COURT: I'm wondering whether -- you or Mr. Knight -- you have had any direction from the Ninth Circuit as to timing or its consideration of the interlocutory appeal.

MR. FEDERICO: Your Honor, I'll speak first to that.

As part of the circuit rule, you have to alert that a motion is coming, emergency consideration. That has been done. We've been in communication with all of the filings. We have not yet heard back, though, from the circuit as to whether or not, one, they're going to grant a request for emergency consideration; two, any subsequent briefing schedule or when they would seek to resolve the issue.

THE COURT: And you've made clear to the circuit that under the existing order, the marshal is authorized to start transporting as of April 13?

1 MR. FEDERICO: Yes, your Honor.

2 THE COURT: All right. Have you heard anything else?

3 MR. KNIGHT: Nothing different, your Honor, no.

4 THE COURT: All right. Mr. Knight, Mr. Federico
5 argues the district court lost jurisdiction to even consider --
6 No, you're the one arguing that.

7 Let's go back. Sorry.

8 MR. FEDERICO: Yes, your Honor.

9 THE COURT: You're arguing -- the Government was
10 arguing that the district court did not have jurisdiction to
11 stay its order because with the interlocutory appeal, it was
12 the Government's position that substantively that matter has
13 now been divested.

14 You're relying on the Federal Rule of Appellate
15 Procedure 8 and its explicit contemplation that the district
16 court would consider the rule. Right?

17 MR. FEDERICO: Yes, your Honor. That is certainly
18 the starting point.

19 Also, I note I had a reply that was drafted that --
20 and then I saw the Court's e-mail the replies will not
21 typically be permitted. I only state that because I am
22 obviously prepared to orally state some case law and talk about
23 the Government's --

24 THE COURT: Let's start about jurisdiction first. Go
25 with that point. Then I would like to hear from Mr. Knight on

1 the jurisdiction issues. And then we will go to the merits, if
2 I'm persuaded I have the authority to consider this motion.

3 MR. FEDERICO: Yes, your Honor.

4 Regarding jurisdiction, the Court is correct.
5 Primarily, relying first on Federal Rule of Appellate Procedure
6 8(a), saying the district court in fact has priority over
7 jurisdiction. And I believe the Government's response somewhat
8 mischaracterized what the defense had filed; both in the Ninth
9 Circuit.

10 They said that we -- once we filed the notice of
11 appeal, the district court had been divested of jurisdiction
12 because we also sought a stay directly with the Ninth.

13 What we did with the Ninth was filed for a request
14 for emergency consideration and then stated, also, that we were
15 simultaneously filing for a motion to stay with the district
16 court. Those were filed on the same day.

17 And then said to the Ninth Circuit that if the
18 circuit court determines that it requires additional time to
19 resolve the matter and the stay hasn't been issued, then we
20 would request the Ninth Circuit to stay the district court
21 order.

22 In other words, the conditions are that if the
23 district court has not stayed it, the Ninth Circuit has said
24 they need more time to resolve, then we would ask the Ninth
25 Circuit to consider a stay.

1 Which is different than what -- the Government's
2 response in saying that we had just gone to the Ninth and
3 sought a stay directly.

4 So we believe under the -- the rule of appellate
5 procedure, the district court has, in fact, then priority
6 jurisdiction.

7 And I think also, your Honor, the cases cited by the
8 Government don't stand for the proposition that really what
9 we're asking the Court here is a procedural matter and not a
10 substantive matter. Because the case law they provided -- for
11 example, the **Griggs versus Provident Consumer** case from 1982.
12 And they said that the Court is now divested of jurisdiction
13 over, quote, the matter as being appealed. Well, the matter
14 being appealed is the transport order. We haven't asked the
15 Court for reconsideration of that order.

16 And -- and, likewise, other case law -- for example,
17 there's a case **In Re Thorp**, from the Ninth Circuit, from
18 1981 -- the citation for that, your Honor, is 655 Federal 2d
19 997. It says that the matter on appeal is a different
20 question, and the Court can consider those matters that are,
21 quote, in aid of the appeal, such as procedural matters. And
22 that's the way we view the current motion to the Court.

23 The other cases cited by the Government,
24 **Ortega-Lopez**, held that the Court lacked jurisdiction -- excuse
25 me, the district court lacks jurisdiction to correct a

1 sentence. Again, that's a substantive matter.

2 Likewise, the **Vromen** case, in that case it was the --
3 the Court held the district court lacked jurisdiction to
4 consider a reconsideration of probation revocation. Again, a
5 substantive matter. So we distinguish the jurisdictional
6 questions on that ground.

7 We believe the district court retains priority
8 jurisdiction to resolve the procedural question for now. And,
9 again, the substantive question as to whether or not the
10 transport should go forward is certainly a matter that we
11 concur with the Government is properly now left to the
12 appellate court.

13 THE COURT: Thank you, Mr. Federico.

14 Mr. Knight, on jurisdiction.

15 MR. KNIGHT: Thank you, your Honor.

16 With respect to jurisdiction, I think as a threshold
17 matter, the parties agree what the rule is and what the cases
18 are. The difference is an interpretation of the facts.

19 And in this instance, to say that there's a
20 procedural and substantive difference is a distinction without
21 a difference. The procedure is the substance of the appeal.
22 The very idea that the basis of the appeal and the arguments
23 underlying the appeal relate to the transport itself and to the
24 stay and the attendant concerns about the deprivation of rights
25 with the movement of the defendants is the same as the

1 procedure. So there's no difference. So, to split hairs and
2 to claim that really there is a procedural issue before the
3 Court and a separate substantive issue now contained in the
4 appeal, we believe, is inaccurate.

5 And the cases that have been cited, we agree with.
6 And we would argue that their holdings do in fact bind this
7 Court and properly lay a factual and legal foundation for the
8 conclusions set forth in the brief; and that is, by virtue of
9 the arguments the defendants have made about the transport of
10 these defendants, this Court has been divested of jurisdiction
11 on this narrow issue.

12 THE COURT: All right. Well, let's move to the
13 merits argument, so that I have a full record here before I
14 have to decide this issue.

15 The Government filed its opposition on the merits.
16 Your primary grounds are ones that were actually argued in the
17 first instance, Mr. Federico, in opposition to the order.

18 So if there's something else you wanted to add or
19 emphasize, I'll hear from you and then from Mr. Knight.

20 MR. FEDERICO: Thank you, your Honor.

21 Yes. The starting point, I think the parties both
22 agree that the **Nken** factors from the Supreme Court would apply
23 to the motion to stay. I won't rehash the arguments, but will
24 sort of give an oral reply to the Government's response.

25 The first factor is the likelihood of success on the

1 merits. In fact, I don't think either party correctly -- or I
2 shouldn't say "correctly," but fully cited some case law that I
3 think gives a little more detail as to what that means.

4 For example, a case called **Leiva-Perez v. Holder**.
5 The citation for that is 640 Federal 3d 962. That is a Ninth
6 Circuit case from 2011. That case, the Ninth Circuit openly
7 acknowledged that there is uncertainty as to the exact degree
8 of what the likelihood of success has to be. And it stated
9 that the test was a substantial case for relief on the merits.

10 So what is a substantial case? I believe that in
11 this case we've easily met that threshold. I mean, as this
12 Court acknowledged, when the issue was brought to the Court's
13 attention, this is a very unusual circumstance with these two
14 complex trials simultaneously and these are some very weighty
15 cons -- constitutional rights at issue.

16 And so I'll just stand on the briefs that have
17 already been filed, as to whether or not there is a substantial
18 case for relief. But I just wanted to invite the Court's
19 attention to what the Ninth Circuit has said that standard
20 means.

21 As to the second factor of the irreparable injury,
22 again, the Court's order originally was that those -- any
23 injury or harm was premature. The Government's response, they
24 called it, quote, purely speculative.

25 I would say that the same Ninth Circuit case I just

1 cited also detailed that this particular factor of irreparable
2 injury is very individualized. It's very case specific. And I
3 think that is important here because of the unusual nature of
4 these circumstances. And -- and I would concur that we're
5 seeking to prevent a future infringement of rights. So,
6 inherently, the process is forward-looking.

7 But here, I think there is some also some case law
8 that's informative, that states that when you bring the matter
9 of constitutional rights infringements to the Court's
10 attention, also it's telling as to what the review is.

11 For example, if you raise constitutional issues
12 pretrial versus post-trial -- and the analogy I'll give here is
13 **Brady**. The Ninth Circuit, in the **Price** case, at 566 Federal 3d
14 900 -- and that's a 2009 case -- said that on -- on appellate
15 review, if you claim there's been a **Brady** violation, you have
16 to make a showing of materiality. But when you're claiming
17 that same violation before it has owe -- the trial has been
18 adjudicated, you don't have to show materiality. I think
19 that's again -- illustrates that when you bring the matter, in
20 terms of constitutional rights and infringement, that -- a
21 decision is made as to what -- the proper showing. Because we
22 have argued and would argue that the defendants need not show
23 prejudice at this point because it's a structural issue.

24 And I'm also going to defer to Mr. Arnold. I think
25 he has a comment regarding prejudice, as well.

1 In the Government's response, they stated that we
2 were not resting -- or, excuse me, that the terms of the
3 irreparable injury factor, that we're resting on an
4 unreasonable assumption that this Court -- the district courts
5 are incapable of fashioning, sort of, case management
6 procedures to protect the rights. And I think that, again,
7 sort of mischaracterizes what the harm is we're articulating.

8 In the opening brief that we have provided as an
9 attachment to the Court, we stated there is a body of case law,
10 the Sixth Amendment -- particularly, rights to effective
11 assistance of counsel -- that talks about basically breaks in
12 contact between defendants and lawyers; and sometimes, in as
13 short as 17 hours, is found to be a violation of the Sixth
14 Amendment.

15 And so, really, as we said in the motion, we see
16 this -- or, excuse me, the opening brief in the Ninth Circuit,
17 is that the Government in the two districts within the
18 executive branch from the Department of Justice has asked the
19 Court to sort of referee and facilitate this process, which the
20 courts are capable of doing. But, on the other hand, the
21 defendants are the ones who suffer the harm from that.

22 And there's a concern here, in terms of harm, that
23 what is likely to happen is if they're transported to Nevada,
24 there's going to be substantial litigation time spent on who is
25 where and when, and what they're going to be doing there.

1 Because, as we've been discussing all morning, this is very
2 difficult and challenging to come up with a case management
3 order here, with the number of defendants. And I would just
4 imagine -- it's not even speculative -- that Nevada is going to
5 face the same problem.

6 Lastly, your Honor, regarding the third and fourth
7 **Nken** factors, which as the parties briefed, merge together
8 between the Government and the opposing party. And those
9 factors are the harm to the other party and the public
10 interest.

11 The Government stated in its response that its motion
12 for stay is inconsistent, and the defendants are being
13 inconsistent with their demand for speedy trial. And we would
14 state the opposite is true because what we are trying to do is
15 keep them here in Oregon, to keep their case on track.

16 And so that there is in fact -- trying to prevent any
17 events, such as a transport, that would interfere with their
18 case preparation in this case, here in the District of Oregon.

19 So not only do we see no inconsistency with the
20 demand for speedy trial, we believe a stay of the order in
21 seeking the appeal of the transfer order is in fact consistent
22 with the demand for speedy trial.

23 And so, your Honor, if I may also -- I just mentioned
24 a moment ago, I defer to Mr. Arnold. I think that he had
25 some -- a point he wanted to make regarding potential

1 prejudice.

2 THE COURT: Certainly.

3 Mr. Arnold.

4 MR. ARNOLD: Thank you, your Honor.

5 Regarding the issue of prejudice, my client has not
6 been transported yet, so he doesn't have any actual prejudice.
7 But I do have proof that it's more likely than not that if he
8 is transferred, there is likely to be prejudice.

9 I have an affidavit that we received after hours last
10 night, and it is essentially from a woman named Deborah
11 Reynolds. And she has been in contact with Peter Santilli --
12 who was transported previously -- on the phone.

13 And I have the affidavit. But I was just going to
14 read portions -- or read it by way of proffer, or I could give
15 it to the Court.

16 THE COURT: Who is Deborah Reynolds?

17 MR. ARNOLD: Deborah Reynolds is the significant
18 other and co-host of *The Pete Santilli Show*.

19 THE COURT: All right.

20 MR. ARNOLD: She's in regular telephone contact with
21 Pete Santilli, and my understanding -- from speaking to her on
22 the phone -- regular contact with Pete's attorney, Tom Coan.

23 And she had received specific information from
24 Mr. Santilli, over the phone, that she conveyed to me. And
25 then we had it reduced to a declaration, regarding his

1 deprivation of access to counsel while he is in Nevada.

2 And with the Court --

3 THE COURT: Since the last hearing, he's been
4 transported to Nevada. Is that what --

5 MR. COAN: He was transported on Tuesday, your Honor.

6 THE COURT: Thank you. That point wasn't clear for
7 the record.

8 Go ahead.

9 MR. ARNOLD: Sorry, your Honor.

10 THE COURT: All right.

11 MR. ARNOLD: Thank you. Ms. Reynolds states that she
12 spoke to Mr. Santilli approximately three days prior to signing
13 this, which would have been the -- the -- the 2nd.

14 And he told me -- he told me that he could not
15 believe what's happened since he had been in Nevada. The first
16 couple of days he thought he would just deal with the
17 conditions of incarceration, but found himself in a cell 23
18 hours a day.

19 And, your Honor, I'll just point out, by way of
20 proffer, this is a similar experience that they -- many of
21 defendants -- if not all of them -- saw here in Oregon. That
22 there is a -- a jail policy at Multnomah County jail to do this
23 secluded treatment for 23 hours a day, basically, in order to
24 essentially process them.

25 I talked to Captain Peterson, at the jail. And it

1 wasn't anything specific to these defendants. It's just what
2 they claim they always do in order to do their intake process
3 for two weeks.

4 So, in essence, they're getting a solitary
5 confinement twice over. They're being re-intaked. Apparently
6 at least Mr. Santilli is, down there. And the problem with
7 that is he is essentially in lockdown. And that this is --
8 again, back to the proffer. That means he is only allowed to
9 come out of his cell when there are no other inmates present.
10 This means that he's only allowed to come out of his cell late
11 at night, 11:00 p.m. local time. That means that he can only
12 contact his attorneys during that time. It's my understanding
13 he eventually -- after the phone call I had with Ms. Reynolds,
14 he was able to reach out and speak to Mr. Coan during business
15 hours, and I don't have any other details about that.

16 At the time, it prevented him from contacting his
17 attorney in Oregon and also prevented him from having family
18 time, and everything else.

19 And we know, by way of proffer from Mr. Bundy's
20 experience in Oregon, during that one-hour time, he has to
21 shave, he has to clean his cell, he has to do personal
22 business, he has to call his family. And then, you know, he
23 can shower and then find time to, you know, do -- do all of
24 these personal things that -- you know, cleanliness, that's
25 sort of a, you know, natural right to do. And, also, if you

1 transfer that obligation -- the personal obligations to the
2 Nevada situation, you also have to call your lawyer.

3 THE COURT: So you're saying this exists for the
4 first 24 hours?

5 MR. ARNOLD: No. It was two weeks here in Oregon.
6 And apparently it was -- if it was last Tuesday through
7 Friday -- or Tuesday through Saturday. So Tuesday, Wednesday,
8 Thursday, Friday -- five days in Nevada.

9 DEFENDANT AMMON BUNDY: My dad and brother are
10 still --

11 MR. ARNOLD: Yeah. Hold on.

12 By way of proffer, my understanding, from speaking to
13 Carol Bundy and from speaking to her -- or Mr. Cliven Bundy's
14 attorney, he's been in some sort of similar conditions for over
15 a month.

16 THE COURT: All right.

17 MR. ARNOLD: Apparently, since -- just by way of
18 candor, also since he began raising these issues with the jail
19 guards, he's been allowed out of his cell for two hours a day;
20 apparently starting on Saturday, is my understanding. He was
21 able to apparently talk to his Oregon attorney during that day,
22 which I believe would have been -- what day is today? Would
23 have talked to his attorney on Monday.

24 The guards -- this is hearsay within hearsay. But
25 the guards personally told Pete, who told Mr. Reynolds -- or

1 Mrs. Reynolds, that it was a hardship on jail staff to take the
2 efforts necessary to keep him from other inmates while in
3 custody.

4 So it appears that there's a suggestion that they're
5 doing it, you know, for the purported safety of the individual
6 defendants.

7 And what I would ask -- in addition to the stay --
8 and the Court asked what could be done in relation to
9 Mr. O'Shaughnessy. I think all of the defendants would benefit
10 from a proactive approach to -- to protecting their rights that
11 are -- could potentially be inhibited based upon this
12 information.

13 We would ask that the Court require the Government to
14 show cause through an evidentiary hearing, where the Court can
15 actually evaluate the condition of the facilities by way of --
16 you know, we can Skype it or telephone call, or whatever. Have
17 the warden of these jails, have the -- have the main jailer
18 that's helping with Mr. Santilli, we can flesh out factually
19 what is actually occurring and the Court can inquire, as
20 opposed to the -- you know, the executive branch, through the
21 U.S. Attorney's inquiring.

22 THE COURT: Thank you.

23 Mr. Coan, did you want to add anything to that?

24 MR. COAN: What I can add to that, your Honor, is I
25 will say, Mr. Santilli's being held at the Anderson County

1 Detention Center, just outside of Las Vegas.

2 I cannot make any calls in to him. He can only make
3 calls to me. So my communications with him are, you know, not
4 good, because I don't know when --

5 THE COURT: Has he been -- I'm sorry.

6 MR. COAN: I don't know when he's going to call.

7 THE COURT: Has he been appointed counsel there?

8 MR. COAN: He was appointed counsel. That -- that
9 attorney, as of yesterday, had not visited him.

10 THE COURT: All right. As yet.

11 MR. COAN: As of yet.

12 THE COURT: All right. And just to refresh my memory
13 of the order that is the subject of this interlocutory appeal,
14 it also anticipated that if that order was exercised according
15 to its terms, Mr. Santilli would be returned to Oregon once
16 those who were transported were returned.

17 MR. COAN: There was an alternative plan, your Honor.
18 We had hoped to have a detention hearing or a review of
19 detention down in Las Vegas before the 13th. Because it's my
20 understanding that if the Court doesn't stay this order, these
21 defendants, here, will be transported down on the 13th. The
22 marshals may be able to transport Mr. Santilli back up here at
23 that time. If he hasn't had his review of detention hearing at
24 that time, it will be the 23rd.

25 THE COURT: All right. So I understand the point

1 about prejudice, having to do with the manner of confinement in
2 Nevada; the concerns the defendants have who are the subject of
3 this order.

4 So were there any other points before I hear from the
5 Government?

6 MR. ARNOLD: My client reminded me that -- another
7 issue that was brought to our attention was the lack of --
8 traveling with the legal documents.

9 THE COURT: I addressed that at the last hearing.

10 MR. ARNOLD: Right. And I believe Mr. Coan --

11 MR. COAN: I can also add to that, your Honor. I
12 was -- the marshals here tried to accommodate. Mr. Gabriel
13 told me that he -- Mr. Santilli would be able to take with him
14 up to a large envelope of documents with him.

15 I gave him an envelope to secure some discovery
16 documents, that he could look at in his travels. When he
17 actually made the travel, he was told he couldn't take
18 anything. So those have all been returned to me, and he
19 doesn't have any discovery materials down there.

20 THE COURT: They are back in your possession?

21 MR. COAN: Yes.

22 THE COURT: Thank you. All right.

23 Mr. Knight.

24 MR. KNIGHT: Thank you, your Honor.

25 With respect to the merits, I'll focus only on the

1 second factor laid out in the parties' briefing, and the
2 Government will rely on its briefs for the other factors. And
3 that factor is whether or not there is indeed irreparable
4 injury absent a stay. And, again, I get back to the language
5 "irreparable injury."

6 What has been proffered to the Court today and what
7 already exists in the record does not amount to what would
8 constitute an irreparable injury. It is, by and large,
9 speculative.

10 And I want to speak specifically, right now, of
11 course, to the concerns about confinement in Nevada because the
12 harm has to be attendant, of course, to the Court's order
13 itself. Not just general confinement conditions here in the
14 District of Oregon, but really as they relate to Nevada.

15 Nothing that has been proffered would suggest there
16 is an irreparable injury or such a severe injury to the
17 defendant's Sixth Amendment rights such that his rights -- in
18 this case, Mr. Santilli's rights -- have been impaired.

19 It was conceded that Mr. Santilli had some contact
20 with Mr. Coan. And I can't speak to the efficacy of the
21 procedures in the jail there. But the bottom line is the
22 record, as it stands right now before this Court, suggests that
23 Mr. Santilli is still receiving representation as a result of
24 the order that's already been effectuated. And there is
25 nothing to suggest -- going forward with these other

1 defendants -- that the District Court in Nevada or the Marshals
2 Service can't ensure that they will have access to counsel or
3 legal materials, going forward. And that seems to be the
4 issue -- the narrow issue as presented by these new arguments
5 today.

6 And with that, your Honor, the Government will rest
7 on the existing arguments in the brief, and supplement it only
8 with the fact, again, that the arguments about harm appear to
9 be purely speculative. And even if accepted at face value,
10 don't rise to the level of irreparable injury.

11 THE COURT: All right. Give me a moment, please.

12 (Pause, referring.)

13 THE COURT: I have taken seriously the arguments
14 defendants raise on all grounds.

15 I conclude that the question the Government has
16 raised as to the Court's jurisdiction to consider the
17 defendants' motion to stay is, in any event, moot, because I
18 don't find the stay as warranted when I consider all of the
19 factors that I'm required to consider.

20 It is and remains a most unusual situation the
21 defendants are facing here. The Court's authority over this
22 prosecution does not extend to controlling the manner in which
23 a co-equal court in Nevada chooses to control a proceeding
24 involving some of the same parties.

25 I tried intentionally to make the order I did enter

1 narrow, time specific, and limited to the one anticipated
2 transport that I've authorized. And I believe, in doing so, I
3 have rendered inarguable, really, the argument of irreparable
4 injury. The whole format and extent of the order is that
5 defendants will be away for a period of about ten days. And I
6 don't find under any of defendants' arguments that that in any
7 way is an injury to their constitutional rights: The right to
8 access to counsel here; their right to speedy trial here; their
9 right to due process here.

10 The extent to which they wish to challenge -- if my
11 order stands -- in Nevada the impact of that order on them
12 there, that's a matter for the Nevada court to address.

13 It's clear that this Court does not have any
14 authority to address the arguments about the manner of
15 confinement or access to counsel when defendants are confined
16 in another judicial district.

17 It's clear the defendants who are the subject of this
18 order do not want to go to Nevada, and I have -- and I
19 certainly appreciate their need to be here and to move forward
20 on the schedule that I'm trying very hard to implement so that
21 we do commence a trial at what I believe is the earliest
22 feasible time, beginning with jury selection on September 7.

23 I don't believe there's any showing, then, of a
24 likelihood of success on the merits here because the fact that
25 it's an unusual case doesn't -- doesn't equal a substantial

1 case for relief on the merits; the narrow tailoring of the
2 order itself minimizes any risk of a constitutional violation;
3 and ten days is just that, ten days.

4 I don't believe any injury the defendants anticipate
5 is irreparable. I don't believe that there is any significant
6 Government or public interest in not allowing the District of
7 Nevada to have the defendants for this limited period of time.
8 And more pract -- pragmatically, I believe I do need the
9 confirmation by the Ninth Circuit Court of Appeals that this
10 order should stand.

11 And if I'm wrong on these analyses, then it's
12 important that that decision get made by a higher court now for
13 the future progress of this case and the one in Nevada. If --
14 if the Ninth Circuit Court of Appeals believes the defendant
15 should not be transported, they know now of the urgency of the
16 matter.

17 I know Mr. Federico and counsel for the affected
18 parties will be contacting the court, the Ninth Circuit Court
19 of Appeals, promptly after this session today, to let them know
20 that I did not stay the order. And that they will need to
21 address it or the marshal will in fact transport. The order
22 remains in effect until an authority overrules it or says it is
23 no longer in effect. And I do not intend to do that here.

24 So, therefore, I don't need to resolve what I think
25 is an interesting theoretical question about jurisdiction.

1 Because if I did have jurisdiction, I would deny the motion to
2 stay on the matters for the reasons indicated; and if I don't
3 have jurisdiction, then the question is moot.

4 So I look forward to the Ninth Circuit providing all
5 of us with controlling direction on this problem. I do not
6 anticipate the issue would arise again here in Oregon, as I've
7 already indicated, and so I'm denying the motion to stay.

8 Mr. Bundy.

9 DEFENDANT RYAN BUNDY: Yes, your Honor. I
10 respectively take exception to your ruling. I do feel that
11 there would be irreparable -- irreparable damage. As far as I
12 know, to date, there is no method and science to move back in
13 time the time that we would lose in transport, in -- in booking
14 in and out, et cetera, et cetera; as time that would be lost on
15 both cases, for both trials, that would not be irreparable.

16 And, you know, you -- you, as a judge, do have the
17 power and the authority to -- to stay that motion, to move us.

18 THE COURT: Well, Mr. Bundy, I didn't say I didn't
19 have the power.

20 DEFENDANT RYAN BUNDY: I understand.

21 THE COURT: I said, on the merits, I don't believe
22 it's warranted here.

23 DEFENDANT RYAN BUNDY: I understand.

24 MS. LUDWIG: Is that it?

25 DEFENDANT RYAN BUNDY: Say that again?

1 (Pause, Ms. Ludwig and Defendant Ryan Bundy
2 conferring. Ms. Ludwig and Defendant Bundy sit.)

3 THE COURT: You're -- all of the defendants affected
4 by my original order have an exception to the ruling just made.

5 As I expect, Mr. Federico will be in touch with the
6 Court of Appeals promptly to see if they will provide expedited
7 guidance on whether a ruling on any issue is forthcoming before
8 the close of business on April 12.

9 (Conclusion of excerpt.)

10
11 --oOo--
12

13 I certify, by signing below, that the foregoing is a correct
14 stenographic transcript of the oral proceedings had in the
15 above-entitled matter this 7th day of April, 2016. A
16 transcript without an original signature or conformed signature
17 is not certified. I further certify that the transcript fees
18 and format comply with those prescribed by the Court and the
19 Judicial Conference of the United States.

20 /S/ Amanda M. LeGore
21 _____

22 AMANDA M. LeGORE, CSR, RDR, CRR, FCRR, CE
23 CSR No. 15-0433 EXP: 3-31-2018
24
25

9th Circuit Case Number(s) 16-30080

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s/ Rich Federico